

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

11	JAMES DEAN WILKS,)	Case No. C05-2057-RSM-JPD
12)	
13	Plaintiff,)	
14)	ORDER DENYING PLAINTIFF'S
15	v.)	MOTION TO COMPEL
16	OFFICER S. PORTER, et al.,)	
17)	
18	Defendants.)	
19)	

Plaintiff is an inmate at the King County Correctional Facility in Seattle, Washington who is proceeding pro se and in forma pauperis this 42 U.S.C. § 1983 civil rights action.

This matter comes before the Court upon plaintiff's motion to compel defendants to respond to his interrogatories and requests for production. Dkt. No. 20. Defendants oppose the motion on the basis of qualified immunity. Dkt. No. 21. They argue that they need not respond to discovery requests that relate to issues other than qualified immunity until the Court has determined whether they are entitled to that defense. *Id.* Having carefully reviewed the parties' papers, supporting documents, and the record, the Court ORDERS as


01 follows:

02 (1) Plaintiff's motion to compel (Dkt. No. 20) is DENIED. Public officials who
03 perform discretionary functions enjoy qualified immunity in a civil action for damages,
04 provided that his or her conduct does not violate clearly established federal statutory or
05 constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*,
06 457 U.S. 800, 818 (1982). Qualified immunity is an affirmative defense that should be raised
07 early in a case in order to prevent government defendants from shouldering the burden of
08 unnecessary litigation and costly pretrial procedure. *Behrens v. Pelletier*, 516 U.S. 299, 308
09 (1996) (internal citations omitted). Because qualified immunity is an affirmative defense from
10 suit, discovery is not appropriate until the Court has ruled on the issue. *Doe v. Petaluma City*
11 *School Dist.*, 54 F.3d 1447, 1449-50 (9th Cir. 1995) (citing *Mitchell v. Forsyth*, 472 U.S. 511,
12 526 (1985)).

15 Defendants have indicated that they intend to raise the qualified immunity defense.
16 Dkt. Nos. 16, 21. Defendants are entitled to raise this defense and need not participate in
17 discovery unrelated to qualified immunity until the Court rules on the issue. Defendants,
18 however, may not delay discovery indefinitely. Defendants are therefore directed to submit a
19 motion to dismiss based on qualified immunity by August 11, 2006. If they do not file a
20 motion by this date, then they will be required to respond to the discovery propounded by
21 plaintiff. Plaintiff may file his opposition to any motion to dismiss on qualified immunity in
22 accordance with Local Rule CR 7(d).

24 (2) The Clerk is directed to send a copy of this Order to the parties and to the
25 Honorable Ricardo S. Martinez.
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01 DATED this 21st day of July, 2006.

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03 JAMES P. DONOHUE
04 United States Magistrate Judge
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